

### § 113.39

(1) and (2) of this section shall be consistent with the requirements of this section.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991; T.D. 95-77, 60 FR 50020, Sept. 27, 1995; T.D. 99-27, 64 FR 13675, Mar. 22, 1999; T.D. 99-64, 64 FR 43266, Aug. 10, 1999]

### § 113.39 Procedure to remove a surety from Treasury Department Circular 570.

If a port director or Fines, Penalties, and Forfeitures Officer is unsatisfied with a surety company because the company has neglected or refused to pay a valid demand made on the surety company's bond or otherwise has failed to honor an obligation on that bond, the port director may take the following steps to recommend that the surety company be removed from Treasury Department Circular 570.

(a) *Report to Headquarters.* A port director or Fines, Penalties, and Forfeitures Officer shall send the following evidence to Headquarters, Attn: Director, Border Security and Trade Compliance Division.

- (1) A copy of the bond in issue;
- (2) A copy of the entry or other evidence which shows that there was a default on the bond;
- (3) A copy of all notices, demands or correspondence sent to the surety company requesting the honoring of the bond obligation;
- (4) A copy of all correspondence from the surety company; and
- (5) A written report of the facts known to the port director or Fines, Penalties, and Forfeitures Officer showing the unsatisfactory performance by the surety company of the bond obligation(s).

(b) *Review by Headquarters.* The Director, Border Security and Trade Compliance Division, shall review submitted evidence and determine whether further action against the surety company is warranted. If it is determined that further action is warranted, a report recommending appropriate action will be submitted to the Fiscal Assistant Secretary, Department of the Treasury, as required by § 223.18(a), Bureau of Government Financial Operations Regulations (31 CFR 223.18(a)). The port director and Fines, Penalties,

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and Forfeitures Officer will be informed in writing of Headquarters action regarding their request for removal of the surety.

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### § 113.40 Acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds.

(a) *General provision.* In lieu of sureties on any bond required or authorized by any law, regulation, or instruction which the Secretary of the Treasury or the Commissioner of Customs is authorized to enforce, the port director is authorized to accept United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills in an amount equal to the amount of the bond.

(b) *Authority to sell United States obligations on default.* At the time of deposit of any obligation of the United States, other than United States money, with the port director or other appropriate Customs officer, the obligor shall deliver a duly executed power of attorney and agreement authorizing the port director or other appropriate Customs officer, as, in case of any default in the performance of any of the conditions of the bond, to sell the obligation so deposited and to apply the proceeds of sale, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of default. The format of the power of attorney and agreement, when the obligor is a corporation, is set forth below, and shall be modified as appropriate when the obligor is either an individual or a partnership:

#### POWER OF ATTORNEY AND AGREEMENT

#### (FOR CORPORATION)

\_\_\_\_\_, (name of corporation) a corporation duly incorporated under the laws of the State of \_\_\_\_\_, and having its principal office in the City of \_\_\_\_\_, State of \_\_\_\_\_, as authorized by a resolution of the board of directors of the corporation, passed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, a duly certified copy of which is attached, does constitute and appoint \_\_\_\_\_ (name and official title of bond-approving officer), and his successors in office, as attorney for said corporation, for and in the name